IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 695 of 2007(G)

PETITIONER:

P.D.THANKAMANI, UPPER DIVISION CLERK,
PUBLIC WORKS DEPARTMENT,
ROADS SUB DIVISION,NEDUMKANDOM, IDUKKI DISTRICT,
RESIDING AT VATTODIL HOUSE, AYYAPPAN KOVIL P.O.
MATTUKATTA, IDUKKI DISTRICT.

BY ADV. SRI.MURALI PURUSHOTHAMAN,
SRI.P.M.BENZIR,
SRI.DEEPU LAL MOHAN.

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY THE**
   SECRETARY TO GOVT, PUBLIC WORKS DEPARTMENT,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE SECRETARY TO GOVERNMENT,**
   LOCAL SELF GOVERNMENT DEPARTMENT,
   GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

3. **THE CHIEF ENGINEER,**
   ADMINISTRATION, PUBLIC WORKS DEPARTMENT,
   THIRUVANANTHAPURAM.

W.P.(C). NO.695/2007:

4. THE CHIEF ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI. BIJOY CHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/03/2007, ALONG WITH W.P.(C). NO. 9498/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.695/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. ED1-35666/2003 DTD. 08/08/2006 ISSUED BY THE R.3. ALONG WITH APPENDIX.

EXT.P.2: COPY OF THE OBJECTION DTD. 04/10/2006 SUBMITTED BY THE PETITIONER TO EXT.P.1. BEFORE THE R.3.

EXT.P.3: COPY OF THE OBJECTION DTD. 10/10/2006 SUBMITTED BY THE PETITIONER TO EXT.P.1. BEFORE THE R.3.

EXT.P.4: COPY OF THE CIRCULAR NO. 33600/EA2/2000 DTD. 20/10/2000 ISSUED BY THE R.3.

EXT.P.5: COPY OF THE JUDGMENT DTD. 21/06/2002 IN O.P. NO. 16772/2002 OF THIS HONOURABLE COURT.

EXT.P.6: COPY OF THE REPRESENTATION DTD. 23/10/2006 SUBMITTED BY THE PETITIONER BEFORE THE R.3.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

K.K.DENESAN, J.

WP(C).Nos. 695 & 9498 OF 2007 G

Dated this the 30th March, 2007.

JUDGMENT

The petitioner in these two writ petitions is the same person. She commenced service as Lower Division Clerk and was promoted as Upper Division Clerk as per order dated 8.8.2006 passed by the third respondent. Ministerial and technical staff belonging to the Public Works Department are ordered to be deployed to the Local Self Government Department in the exigencies of service. Deployment became necessary since the developmental and like activities carried on by the Public Works Department, Irrigation Department etc. were entrusted with the Local Self Government Department. Deployment is ordered based on certain norms formulated by the Government. Those who expressed their willingness to be deployed will be preferred first for deployment. Thereafter, if sufficient number of manpower is not available to execute the work in the Local Self Government Department, employees will be deployed even if they have not expressed their willingness. But that is done only according to the juniority of persons in the respective categories.

2. W.P(C) 695/2007 has been filed by the petitioner for the issuance of a writ of mandamus restraining the

respondents 1 and 3 from deploying the petitioner to the Local Self Government Department without her consent. Taking note of the ground urged by the petitioner that she was not one of the juniormost clerks and that the question of inter se seniority was under consideration by the authorities and that the petitioner had filed representation produced as Ext.P6 in that writ petition, this Court passed an interim order directing the respondents to keep the order of deployment of the petitioner in abeyance until decision was taken on Ext.P6. Pursuant to order dated 8.1.2007, thus passed by this Court, the third respondent has issued Ext.P8 order dated 13.2.2007 holding that the petitioner is one of the juniormost Upper Division Clerks as on the date of the order deploying her to Local Self Government Department. Ext.P8 order further says that orders of deployment have been issued strictly in accordance with G.O(P)186/2000/LSGD dated 4.7.2000. Feeling aggrieved, the petitioner has filed W.P(C) 9498/2007 seeking to quash Ext.P8 and for a direction to the respondents to permit the petitioner to continue in the Public Works Department.

3. Since the petitioner has contended that Ext.P8 order was passed violating the principle of seniority and that she is not that far junior in the category of Upper

Division Clerk, so as to include her in the list of deployed clerks, the Government Pleader was directed to ascertain the position of the petitioner in the category of Upper Division Clerk.

4. Govt. Pleader on instruction states that as per Ext.P1 order dated 8.8.2006 in W.P(C) 9498/2007 issued by the third respondent 59 Lower Division Clerks including the petitioner, have been promoted and that by a subsequent order of promotion issued on 8.9.2006, 28 persons more have been promoted. The name of the petitioner is shown against serial No: 59 in Ext.P1 order. Govt. Pleader further submits that all persons except four Upper Division Clerks who are due to retire within a period of one year covered by the aforesaid two orders, have been deployed.

5. On a consideration of the materials available on record and the submissions made by counsel on both sides, I am inclined to take the view that the petitioner cannot validly claim that she is not one among the juniormost persons who should suffer an order of deployment. The fact that the petitioner is serial No:59 in the order dated 8.8.2006 and only 28 persons more have been promoted to the Upper Division cadre subsequently, demonstrates the place of the petitioner among the Upper Division Clerks. Having regard to the number of persons deployed, it cannot be

successfully argued that the petitioner is not liable to be deployed. Hence the contention urged by the petitioner on the ground that she is not one of the juniormost persons in the Upper Division category is liable to be rejected.

6. The argument of the counsel for the petitioner that deployment is akin to deputation to foreign service and that such deputation cannot be ordered unless the employee expresses his/her willingness, is devoid of merit. Deputation or deployment is a method resorted to in the exigencies of service. Willingness of the persons deputed or deployed is not a legal requirement, as per the Rules.

7. The grievance of the petitioner that the preparation of seniority shall not be delayed has to be considered by the respondents and appropriate steps taken. It is open to the petitioner to pursue the representations filed by her for expediting the seniority list as early as possible. It is also open to the petitioner to bring to the notice of the authorities her contention with supporting materials, that the strength of the ministerial employees and the technical staff in the Public Works Department is below the minimum required in the department.

8. I am not satisfied that Ext.P8 is liable to be interfered with by this Court. The declaration as also the

direction sought for to restrain the respondents from deploying the petitioner cannot be granted. I, however, make it clear that the respondents will be free to consider the request of the petitioner to repatriate her to the parent department as and when she becomes eligible for such repatriation and to pass orders in that behalf. With the above observations, these writ petitions are dismissed.

K.K.DENESAN
Judge

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